Filed 10/6/04 In re Reginald G. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re REGINALD G., a Person Coming Under the Juvenile Court Law.	B172184 (Los Angeles County Super. Ct. No. FJ24145)
THE PEOPLE, Plaintiff and Respondent, v. REGINALD G., Minor and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles Q. Clay, III, Judge. Affirmed in part; reversed in part with directions.

Valerie G. Wass, under appointment by the Court of Appeal, for Minor and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Mark E. Turchin, Supervising Deputy Attorney General, Jack Newman, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Minor and appellant Reginald G., a juvenile, contends the trial court abused its discretion by ordering him to be committed to the California Youth Authority (CYA). We hold that the trial court did not abuse its discretion, but we remand this matter to the trial court for a recalculation of the minor's precommitment credits.

FACTUAL AND PROCEDURAL BACKGROUND

Minor's juvenile criminal history

When minor was 12 years old, a petition filed under Welfare and Institutions Code[1] section 602 alleging a violation of Penal Code section 626.10, subdivision (b)[2] (having a weapon on school grounds), was sustained. Minor was declared a ward of the court and he was placed in a short-term camp community placement program for a period not to exceed three years. Minor received 23 days of predisposition credit. When minor was 14 years old, he was detained for taking a vehicle without the owner's consent and driving without a license. Also when he was 14, a petition was filed under section 777 for failing to obey a juvenile court order. He was ordered into a "suitable placement."

Then, when he was 15 years old, minor was arrested on a warrant for failure to appear in court. Finally, when he was 16 years old, another petition under section 602 was filed charging him with possession of a firearm by a minor (Pen. Code, § 12101, subd. (a)(1)) and giving false information to a police officer (Pen. Code, § 148.9, subd. (a)). That petition was sustained, and minor was placed in a long-term camp community placement program for a period not to exceed three years, eight months. He was awarded 360 days of precommitment credits.

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1 All undesignated statutory references are to the Welfare and Institutions Code.

2 It appears minor should have been charged with a violation of Penal Code section 626.10, subdivision (a), as he brought the weapon onto the grounds of Jefferson Middle School. Subdivision (b) of Penal Code section 626.10 pertains to bringing a weapon onto the grounds of a private or public university or community college.

Minor's current arrest

On September 21, 2003, Officer Jessie West received a call that there was a group with a gun. He went to the location where the alleged disturbance was occurring, and he saw minor standing in an alley. Upon seeing Officer West, minor grabbed for his waistband and ran away. Officer West chased minor on foot into the backyard of a house. Officer West saw minor pull a gun from his waistband, toss it to the ground, and kick it. Officer Burrola found the gun, which had the magazine fully inserted and a round chambered.

Minor, who was 17 years old at the time of his arrest, told Officer West he was an active member of the Hard Time Hustler Crips. His gang moniker is "L'il Tyson."

The petition and the trial court's judgment

Based on minor's arrest, a petition was filed under section 602 alleging a violation of Penal Code section 12101, subdivision (a)(1), which prohibits a minor from possessing a gun. The trial court sustained the petition.

Before placing minor, the trial court received into evidence the probation officer's report. According to the report, minor's mother, who was hospitalized with cancer, said he was "out of control" and disrespectful, he cursed at his mother, he smoked marijuana and came home after midnight "high" on a regular basis, and he drank alcohol. After being furloughed from Camp Rockey on May 8, 2003, minor never attended drug and gang intervention counseling, although he was referred to them.

Minor was suspended from school on June 16, 2003, and he was told to return with his mother to be readmitted. He did not do so, and, instead, he did not attend school from June 16 to July 1, 2003, and from July 21 to July 24, 2003. He was also absent due to illness on July 7 and 15, 2003. He was failing four of seven classes, including english and algebra.

Under "Analysis and Plan," the Probation Department report stated, "The minor's continued criminal activity, as witnessed in the present offense, indicates that he is an

ongoing threat to the community. His actions are examples of his delinquent behavior persisting. It appears as though there is a lack of control. Despite parental, court, and Probation Department instructions, the minor continues to involve himself in criminal activity. [¶] The minor's arrest history suggests that he is on his way to becoming a career criminal. His arrest history coupled with the nature of the present offense is such that stringent control measures are deemed necessary. [¶] However, the minor may be at a disadvantage regarding family support. He does not reside with his father. His mother has cancer. She complains of the minor's behavior but is not in favor of the minor receiving the consequences of his behavior. It appears that no one has been able to provide the structure the minor needs. Perhaps the minor's family members[']dysfunctional behavior reinforces the minor's negative behavior. [¶] Nevertheless, the court has given the minor ample opportunity to change his behavior. He was ordered camp community placement twice and suitable placement once. He was also given the opportunity to receive services that would aid in his rehabilitation. Unfortunately, the minor failed to take advantage of these services. The minor is in need of intense gang intervention, individual, and anger management counseling. However, he also needs to be in a controlled and confined environment. The minor needs to realize that there are serious consequences to his criminal actions. Although camp community placement consists of all of the above, it has not been successful. The minor's last camp program had so little impact that the present offense occurred less than six months after being released. Therefore it is felt that all services afforded at the county level have been exhausted. A California Youth Authority commitment will impress upon him the importance of abiding by the law, serve as a deterrent for future criminal activity, and hopefully, encourage him to make the changes necessary to become a productive member of society. Residential care may be required if the minor violates court orders or engages in behavior resulting in removal from the community pursuant to court order."

Before issuing its ruling, the trial court stated, in part: "There's an indication in the preplea report that the minor is and has been a Hard Time Hustler for some period of

time. That coupled with the constant -- well, multiple occasions upon which he's carried a firearm, despite having been on probation for at least two of those incidents, the most recent looks like the incident in July of 2002 and perhaps the one in January of '99 in addition to this most recent one. Those are problematic. [¶] There's also the lack of progress or cooperation with the prior orders for home on probation that are indicated in the report . . . . The minor's failure to take advantage of the counseling services and other services that were made available to him, and page 9 indicating that there are some serious problems in the home of the mother that I can only imagine if they did not cause her condition to worsen, certainly did not help her psychological status and her ability to deal with her health problems while that was going on. [¶] Lastly, it's indicated that this offense occurred just within 6 months of him having been released back in May of 2003. [¶] So there comes a point where the system has to not necessarily throw up its hands and give up but to recognize the fact that everything that we've tried thus far just hasn't worked and there's nothing to suggest that it's going to work. [¶] The probation officer's opinion is that the services offered at the county level have been exhausted. I don't know if they're exhausted, but they['re] still available, of course, but there's nothing again to suggest that Reginald is going to avail himself of the benefit of them; and once that happens, the only thing to do is to shift gears and recognize that rehabilitation might be a little too much too hopeful by a little less carrot than a little more stick. [¶] The bottom line is my concern for the safety of the community, and Reginald is going to continue to carry firearms. That he's shown in the past he's likely to do. Community safety becomes a concern and what happens to Reginald for the rest of his life is going to be a concern. So I've got to do my part to make sure that Reginald stays alive and give him the opportunity to decide that this is going to be his last incarceration."

The trial court aggregated the period of confinement based on the previously sustained petitions, and ordered minor committed to the CYA for a period not to exceed 4

years, 4 months. The trial court gave minor 54 days of "additional predisposition credits."

DISCUSSION

Commitment to CYA

Minor contends the trial court abused its discretion in committing him to the CYA because it failed to find that the commitment would result in a probable benefit to him and to find that less restrictive alternatives had been exhausted. We do not agree.

A commitment to the CYA is reviewed for an abuse of discretion, and in evaluating the evidence and making that determination, we must apply the substantial evidence test. (*In re Teofilio A.* (1989) 210 Cal.App.3d 571, 579.) A decision to commit a minor to the CYA will not be deemed to constitute an abuse of discretion where the evidence " 'demonstrate[s] probable benefit to the minor from commitment to the CYA and that less restrictive alternatives would be ineffective or inappropriate. [Citation.]' [Citation.].") (*In re Pedro M.* (2000) 81 Cal.App.4th 550, 555-556; see also § 734.)[3]

The record contains substantial evidence there would be a probable benefit to minor from commitment to the CYA. Minor did not take advantage of referrals to drug and gang intervention counseling. There is evidence that he continued to abuse drugs and alcohol; he continued to be an active gang member and to carry firearms; and prior attempts to address these problems—namely camp and suitable placement—failed to change minor's behavior. The probation report warned that minor was on his way to becoming a career criminal. Based on the evidence, the trial court found that minor had carried a firearm despite being on probation, that he failed to take advantage of

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[3] Section 734 states, "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority."

counseling services, and that there was no indication minor would take advantage of services offered at the county level. In addition, the evidence caused the trial court to express a "concern for the safety of the community, and [that] Reginald is going to continue to carry firearms." A concern for the "safety and protection of the public" is also a factor the trial court may consider in determining whether there is a probable benefit to committing minor to the CYA. (§ 202, subd. (a); see also *In re Asean D.* (1993) 14 Cal.App.4th 467, 473 ["the 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public"].) The trial court therefore acted within its discretion to order minor committed to the CYA.

Notwithstanding the evidence that supports his commitment to the CYA, minor contends the trial court erred by failing to mention his educational needs and whether commitment to the CYA would address those needs. There is nothing in the record, however, to suggest minor has special educational needs, such as were at issue in *In re Angela M.* (2003) 111 Cal.App.4th 1392, cited by minor. In that case, evidence in the record showed that the minor suffered from a bipolar disorder, and a doctor recommended that the minor be evaluated to determine whether she had special educational needs. Because the trial court in *In re Angela M.* failed to address the minor's special educational needs, a remand was necessary. The record before us merely shows that minor was receiving two F's, two D's, one C, and one B in his classes, and he had attendance problems. But no connection between his educational performance and any special educational needs was ever made in the trial court. Defense counsel never argued his client has such needs. Nor is there expert evidence establishing minor has special educational needs.

We also reject minor's additional contention that the record fails to demonstrate that less restrictive alternatives would be ineffective or inappropriate. Minor had twice been in a camp community placement and once in a suitable placement. He had been referred to drug and gang intervention counseling, but he failed to attend. None of these

efforts caused minor to change his behavior. Therefore, the trial court did not have to again try a less restrictive alternative before committing minor to the CYA. Instead, the trial court acted within its discretion to conclude that the circumstances suggested the desirability of a CYA commitment despite the availability of such alternative dispositions as placement in a county camp or ranch. (*In re John H.* (1978) 21 Cal.3d 18, 27; *In re Angela M., supra,* 111 Cal.App.4th at p. 1396; *In re Asean D., supra,* 14 Cal.App.4th at p. 473.)

Custody Credits

On February 11, 1999, the trial court sustained a petition filed under section 602 and ordered minor placed in a camp community placement program. Minor was given 23 days of precommitment credits. On August 12, 2002, the trial court sustained another petition and again ordered minor placed in a camp community placement program. Minor was given 360 days of precommitment credits. On the petition at issue, the trial court gave minor an "additional" 54 days precommitment credits.[4] He contends on appeal that he is entitled to 414 days of credit (360 days plus 54 days).

The parties agree, as do we, that minor is entitled to more days of precommitment credit than the 54 days awarded because of the prior petitions. (See generally Pen. Code, § 2900.5; *In re Eric J.* (1979) 25 Cal.3d 522, 533-536; *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067-1068.) But because the record does not show the total number of days minor spent in confinement as a result of the prior petitions, the matter must be remanded to the trial court for that determination.

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[4] Minor was detained on September 21, 2003, and the disposition hearing was on November 13, 2003.

DISPOSITION

The matter is remanded for a recalculation of the minor's precommitment credits only. The judgment is affirmed in all other respects.

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MOSK, J.

We concur:

TURNER, P.J.

ARMSTRONG, J.